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November 12, 2013

VIA ECF

The Honorable Denise L. Cote
Daniel Patrick Moynihan United States
Courthouse
500 Pearl Street, Room 1610
New York, NY 10007-1312

Re: FHFA Actions, No. 11-cv-6202, et al. (S.D.N.Y.) (DLC)

Dear Judge Cote:

We write to seek the Court's assistance in requiring Defendants to take the deposition of Peter Niculescu on November 15, 2013 in New York. November 15, 2013 is the only date before the close of discovery when the witness, the witness's counsel and counsel for FHFA are available. Defendants, however, do not wish to take the deposition on that date because, among the seven defense law firms, one person who wishes to depose Mr. Niculescu—David Blatt of Williams & Connolly—has an as yet unidentified professional conflict. Defendants have identified no other impediment to the deposition proceeding on November 15, 2013. The parties have met-and-conferred and are at an impasse.

Defendants' rationale is not a valid reason to reject the proposed date, especially with the looming party fact discovery deadline. Seven law firms represent the remaining 12 Defendant families. Dozens of attorneys have appeared at depositions of FHFA's witnesses and more than a dozen have questioned those witnesses on behalf of all defendants. It belies reason that none of them are able to prepare for and take Mr. Niculescu's deposition on November 15.¹

Defendants have understandably attempted to use the same reasoning, arguing that Mr. Niculescu, his counsel, and Mr. Blatt are all available on December 6, and that FHFA should be able to find an attorney available to defend Mr. Niculescu on that day. But unlike Defendants, one of two attorneys has defended every FHFA witness with one exception. Neither of those attorneys is available on December 6. In addition, the Amended Deposition Protocol requires the party producing the witness to propose dates. Amended Deposition Protocol at 8-9. FHFA has not proposed December 6 as a possible deposition date.

¹ Defendants noticed Mr. Niculescu on October 26. Due to the passing of his prior counsel, however, FHFA was delayed in providing a deposition date. FHFA proposed November 15, 2013, as a deposition date as soon as Mr. Niculescu and his new counsel were able to coordinate. Nonetheless, all Defendants have known for weeks that they would be deposing Mr. Niculescu.

FHFA respectfully requests that the Court order that if Defendants intend to proceed with Mr. Niculescu's deposition, then they must depose him on November 15, 2013 in New York, as proposed.

Respectfully submitted,



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